

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NORTH CAROLINA

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5 UNITED STATES OF AMERICA

6 v.

Docket No. 5:09-CR-216-FL

7 DANIEL PATRICK BOYD,
8 HYSEN SHERIFI,
9 ANES SUBASIC,
10 ZAKARIYA BOYD,
11 DYLAN BOYD,
12 MOHAMMAD OMAR ALY HASSAN,
13 ZIYAD YAGHI
14 - - - - -

Raleigh, North Carolina
October 5, 2010

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**TRANSCRIPT OF SCHEDULING CONFERENCE BEFORE
THE HONORABLE JAMES E. GATES, MAGISTRATE JUDGE,
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA**

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P R O C E E D I N G S

GENERAL SESSION

(The following proceedings were held in general session at the United States Courthouse, 210 New Bern Avenue, Raleigh, North Carolina, before the Honorable James E. Gates, Magistrate Judge for the Eastern District of North Carolina, on October 5, 2010, at 10:15 a.m.)

(Defendant Anes Subasic is present.)

* * *

THE COURT: Good morning, folks.

(Replies of "Good morning.")

It's good to see all of you again.

We're here, of course, for a status conference in the case of United States v. Boyd, et al. We've also got a motion to hear.

Let me begin by swearing the interpreter.

(Tanja Abramovic was duly sworn by the Clerk as English-Bosnian interpreter.)

THE COURT: I would propose that we proceed this morning as we have in the past at these sessions, that is, begin with a general session with counsel for all parties present, then break off for a closed session with defense counsel, and then do the same a bit later with counsel for the government.

After that, I would like to take up the motion that is

1 before the Court.

2 And there may be a need, with respect to that motion,
3 of course, to have an open session. And I know that there is
4 going to be a need for at least a portion of that discussion
5 to be in closed session, as well.

6 Very good, folks. Let me -- let's turn now to the
7 topics we've been talking about for some time. Let's begin
8 with the transcripts.

9 Ms. Graves, do you have anything in particular to
10 report with respect to transcripts?

11 MS. GRAVES: Good morning, your Honor.

12 THE COURT: Good morning.

13 MS. GRAVES: I'll just give you a status report.

14

15 The consensual recordings have all been transcribed,
16 and we are -- when I say "we," I mean our office -- is
17 addressing issues that are coming up with the company, any
18 quality issues as they arise, and then giving feedback back to
19 the party who raised it with us. So, I think that's --

20 THE COURT: And I gather -- I know, when we were
21 the last together, that some of the quality issues, they
22 seemed to be working this themselves out. Does that continue
23 to be the case?

24 MS. GRAVES: Yes, sir. I think they still are.

25 THE COURT: Oh, that's great.

1 MS. GRAVES: We have uploaded the SBU
2 transcripts. We did that last Thursday, completed the
3 uploading process I think yesterday. We haven't gotten any
4 feedback from any of the panel attorneys regarding that,
5 but --

6 THE INTERPRETER: Your Honor.

7 THE COURT: One moment, Ms. Graves.

8 Madam Interpreter, are you having a problem?

9 THE INTERPRETER: Yes. It is a little too fast,
10 and the defendant requested that if it is too fast and the
11 interpreter cannot -- cannot interpret, then the defendant
12 asks that it be a little -- just slower.

13 THE COURT: Oh, that's fine. And, Madam
14 Interpreter, if at any time any of us is speaking too quickly,
15 please let me know, and I will instruct whoever is speaking to
16 slow down. And if I am speaking too quickly for you to
17 interpret, please let me know.

18 THE INTERPRETER: Thank you.

19 THE COURT: Because I do want -- I want you to be
20 able to interpret and I certainly want Mr. Subasic to
21 understand what we're discussing here today.

22 Ms. Graves, can you review a portion of what you
23 mentioned?

24 MS. GRAVES: Yes. The sensitive but unclassified
25 recordings are being uploaded on to the servers that all the

1 panel attorneys have access to. That process began last
2 Thursday, and I believe we completed that process yesterday.
3 So, those are available for all attorneys.

4 THE COURT: Very good. And, so, what does that
5 leave to be done?

6 MS. GRAVES: I think the only thing left to be
7 done is quality control issues as they arise.

8 THE COURT: I see. So, essentially, all the
9 transcripts have been prepared?

10 MS. GRAVES: Yes, sir.

11 THE COURT: Very good. Well, that's excellent
12 news. Thank you.

13 Does any other counsel wish to be heard with respect to
14 transcript preparation?

15 (No response.)

16 I just note we do have some deadlines upcoming with
17 respect to transcripts.

18 MS. KOCHER: Your Honor, if I could address the
19 transcripts real quick. I just want to make sure the Court
20 understands -- I believe that --

21 THE COURT: Ms. Kocher, just keep in mind the
22 interpreter needs to be able to interpret.

23 MS. KOCHER: Thank you. I'm also getting a nod
24 from the court reporter, so I must have started out right out
25 of the gate.

1 The consensual monitorings have all been completed. I
2 believe it is fair to say that the consensual monitoring
3 recordings have all been transcribed.

4 I believe that from the public defender's standpoint
5 the foreign language sensitive transcriptions have been
6 completed and uploaded to the availability of the other
7 defenders.

8 The bulk of the sensitive transcripts are through the
9 government contract, and those have not been completed. So,
10 those are under way.

11 THE COURT: Ms. Graves?

12 MS. GRAVES: Do you want me to clarify?

13 THE COURT: Yes, if you could, please.

14 MS. GRAVES: It was our obligation to provide the
15 foreign language transcripts, unclassified, to the other panel
16 attorneys.

17 THE COURT: Correct.

18 MS. GRAVES: And I just wanted to make sure that
19 you understand that we have completed that obligation.

20 THE COURT: I see. I did misunderstand you in
21 that regard.

22 Yes, Madam Interpreter?

23 THE INTERPRETER: The defendant has a question.
24 The defendant needs a pen, because he wants to write down
25 everything.

1 All the information that I have heard now are
2 completely unknown to me.

3 THE COURT: Well, ma'am -- Mr. Wiles, could you --
4 the defendant is not to address the Court directly at this
5 stage of the proceedings.

6 Could you please interpret that for him, ma'am?

7 THE INTERPRETER: Sure.

8 (Interpreter conveying interpretation to the
9 defendant.)

10 THE COURT: If he has comments, he needs to convey
11 them to Mr. Wiles, who is his lawyer, and then Mr. Wiles may
12 address the Court.

13 (Interpreter conveying interpretation to the
14 defendant.)

15 (Interpreter conferring with Mr. Wiles off the
16 record.)

17 (Mr. Wiles providing pen to the defendant.)

18 MR. WILES: Thank you, your Honor.

19 THE COURT: Thank you, Mr. Wiles.

20 Ms. Graves?

21 MS. GRAVES: Your Honor, there is some additional
22 information I'd like to provide to the Court regarding these
23 sensitive but unclassified transcriptions ex parte.

24 THE COURT: That's fine.

25 MS. GRAVES: Thank you.

1 THE COURT: So, as I understand it, Ms. Kocher,
2 the body of transcripts that remain pending are the English
3 language consensual recordings?

4 MS. KOCHER: Not consensual recordings, your
5 Honor. The sensitive.

6 THE COURT: Correct. That's fine.

7 MS. KOCHER: Sensitive. And the government is
8 having transcribed what it has designated for use at trial,
9 not the entire body of sensitive recordings.

10 THE COURT: That's right. And that production is
11 due December 1?

12 MS. KOCHER: That's correct, your Honor.

13 THE COURT: All right. And is the government on
14 track to make that production timely?

15 MS. KOCHER: At this time, your Honor, we do
16 indeed hope so, your Honor. The contract is in place and
17 we'll be receiving transcripts just momentarily.

18 THE COURT: I see. Okay. Very good.

19 Anything further with respect to transcripts?

20 Thank you, Ms. Graves, for your continuing work on
21 them. The Court does appreciate your efforts as liaison.

22 Let me turn, then, to the issue of computer hard
23 drives.

24 Mr. McAfee, sir, any issues there for our general
25 session?

1 MR. McAFEE: No, your Honor. I've circulated an
2 e-mail two weeks ago, I believe it was, requesting that if
3 counsel had any issues regarding the acquisition or copying or
4 examination of hard drives, to let me know. And no counsel
5 had any conditions at this point.

6 THE COURT: Very good. Well, your tutorial must
7 have been successful.

8 MR. McAFEE: I'm assuming somebody read it.

9
10 (Laughter.)

11 THE COURT: Any other counsel wish to be heard
12 with respect to the computer hard drives?

13 (No response.)

14 I assume there are no issues on the government's behalf
15 with respect to computer hard drives?

16 MS. KOCHER: No, sir.

17 THE COURT: Very good. Thank you.

18 Mr. Hill, I think the issue of paper discovery is very
19 much in the rearview mirror.

20 MR. HILL: It is, your Honor.

21 THE COURT: And has it remained there?

22 MR. HILL: Yes, your Honor. Nothing to report.

23 THE COURT: Good. Any counsel have any issues
24 with respect to paper discovery that would be appropriate for
25 the general session?

1 (No response.)

2 And, Ms. Kocher, I'll just check in with you and
3 Mr. Bowler. I assume there are no issues in that regard for
4 the government?

5 MS. KOCHER: No, your Honor.

6 THE COURT: Very good. Thank you.

7 That takes us to the issue of foreign depositions.

8 Mr. McCullough, is there anything in that arena that we
9 can discuss appropriately in general session here?

10 MR. McCULLOUGH: Yes, your Honor, there is. I
11 don't think any of this is sensitive. It's all administrative
12 in nature.

13 I have been in regular contact now with the American
14 Citizens Section of the embassy in Amman, and they've been
15 very helpful. They have reserved rooms for me to utilize at
16 the embassy, itself.

17 The next issue from our side is the fee that they
18 charge for the rooms, which are waived, so that I would not
19 have to pay those. But I've just learned that that's a
20 Department of Justice responsibility, and a letter will have
21 to emanate from the Justice Department to the embassy. And
22 I'm going to provide the statutory authority for that
23 requirement, as well as the proper address for the letter to
24 be addressed to the government. And, hopefully, they'll get
25 the letter so that we don't have to pay the fees.

1 They're rather large. It's like 400-and-some dollars
2 for the consular officer to swear in a witness or
3 interpreter.

4 THE COURT: Oh, really.

5 MR. McCULLOUGH: And they do that for each
6 witness. So, if it's one time, that's \$400; if it's two
7 times, it's \$400. I suppose they charge \$400 to swear the
8 interpreter. That's my understanding. But it doesn't make
9 any sense for the government to pay itself, and so, they do
10 have a C.F.R., Code of Federal Regulations, that allows for
11 the fees to be waived upon request of the government agency.

12 THE COURT: I see.

13 MR. McCULLOUGH: Now, the Department of Justice,
14 through Mr. Bowler, has related to me that they have prepared
15 their information and sent it to the State Department for
16 processing. And they're in the stage of preparing a
17 diplomatic note to the government of Jordan requesting
18 permission for the prosecutors to come in.

19 There's a request for some information, which I will
20 provide to the --

21 MR. BOWLER: Your Honor?

22 MR. WILES: The translator is having trouble
23 keeping up with the conversation. If people could slow down,
24 it would very much help the translator and thereby help my
25 client.

1 Excuse me.

2 MR. McCULLOUGH: I'll summarize some of the
3 last --

4 THE INTERPRETER: The interpreter gets interrupted
5 all the time by the defendant because he wants clarification
6 of some things, and he wants some things to be repeated. So,
7 in that way, the interpreter gets -- the interpreter's focus
8 is not so clear.

9 So, basically, therefore the defendant should be
10 advised not to interrupt the interpreter and not to ask some
11 questions. It would be -- the interpreter would appreciate
12 that very much.

13 THE COURT: Mr. Wiles, can you chat with
14 Mr. Subasic? One question I have is whether he is -- if he is
15 asking for clarification from the interpreter, I'm concerned
16 whether he is actually understanding the translation that is
17 being provided or if he is asking substantive questions.
18 Substantive questions, obviously, should come to you at an
19 appropriate time. Issues about his understanding the
20 language, that's another matter.

21 (Mr. Wiles conferring with the defendant without use of
22 the interpreter.)

23 (Mr. Wiles conferring with the interpreter off the
24 record.)

25 MR. WILES: I think we can proceed, your Honor.

1 Mr. Subasic has some -- has some -- understands some English
2 and understands, of course, what the translator is saying, and
3 is not always sure that she is translating what he believes
4 the English means, and will ask her to clarify that. And
5 there are times when he needs for her to repeat something that
6 she has said so that he can get it written down. And then she
7 gets interrupted and needs for the speaker to slow down and
8 say it again so that she can translate it for him again.

9 So, it's a very -- and, of course, it's a simultaneous
10 translation, which I've never done simultaneous translation,
11 myself. I have served as an interpreter in another role in
12 another setting, but it was speak a little, interpret a
13 little, speak a little, interpret a little. And simultaneous
14 translation, I understand, based on what the translator is
15 telling me, is that there are things that don't all get
16 translated.

17 I don't know what else to say.

18 THE COURT: Well, that's fine. The Court has --
19 the Court has approved -- my understanding is that the
20 interpreter is a certified interpreter and is qualified to be
21 here.

22 Madam Interpreter?

23 THE INTERPRETER: May the interpreter address the
24 Court?

25 THE COURT: You may.

1 THE INTERPRETER: According to the rules,
2 everything should be interpreted, even in simultaneous
3 interpretation. However, the realistic -- or the realities
4 are different and some sentences get missed.

5 But the reason the defendant complained is he
6 interrupted me at one moment, and then, after that, the
7 interpreter -- after that interruption, the interpreter was
8 not able to focus again. That is why the interpreter missed
9 something. And if -- if the -- the interpreter will
10 appreciate very much if the Court, if the judge, instructed
11 the defendant just not to interrupt the interpreter, but to --
12 but to let her interpret what she hears.

13 THE COURT: Very good, ma'am.

14 Do I understand you to be saying, aside from being
15 interrupted by the defendant, you're not having a problem
16 interpreting what's being said here today?

17 THE INTERPRETER: No, I don't have any problems
18 interpreting. But the interpreter can be interrupted --

19 THE COURT: I understand. And is it your
20 impression --

21 THE INTERPRETER: -- with the legal and
22 everything --

23 THE COURT: Is it your understanding that the
24 defendant understands the interpretation that you are
25 providing him?

1 THE INTERPRETER: Actually, the defendant would
2 like to clarify some things that are not -- that are -- that
3 he is not familiar with. For example, he said that he didn't
4 hear about the transcripts and some other things. So,
5 that's -- he gave that comment, you know.

6 THE COURT: Well, my concern is, at this point,
7 whether he understands the substance of what you're saying.
8 But I want to -- I want to confirm with you or not that he --
9 it's your impression that you believe he understands the words
10 that you're saying?

11 THE INTERPRETER: He understands the words. But
12 the interpreter --

13 THE COURT: But he may not be conversant in --
14 ma'am, please don't talk over me.

15 He may not be conversant with the full meaning of the
16 words, but he understands the translation? The sounds that
17 you're providing him, he understands those? That's your
18 impression?

19 THE INTERPRETER: Yes, that's my impression.
20 Yes.

21 THE COURT: Okay. Let me provide an appropriate
22 instruction now to Mr. Subasic.

23 THE DEFENDANT (in English): Mr. Subasic is
24 not --

25 THE COURT. No, sir. Mr. -- well, let me ask you,

1 sir, Mr. Subasic, are you understanding the interpreter?

2 THE DEFENDANT (in English): I do not understand
3 the interpreter, and the reason because she missed at least
4 half of what has been said. I lived in the United States 12
5 years. I do speak English in a way, simple English. I do not
6 understand court English. That is some of the reasons I need
7 translator.

8 And apparently she cannot catch what you guys spoken
9 about. She missed pretty much -- she translates hard drives
10 are finished, the transcripts are finished, the copies are
11 finished. She missed 90% what these gentlemen out there
12 said.

13 I cannot find her to be useful, but hurtful, in this
14 kind of process. This is terrible.

15 THE COURT: Very good, sir. Well, for purposes of
16 the status conference, the motion -- your motion for
17 substitution of counsel is a different matter -- but for
18 purposes of this status conference, let's proceed as follows:
19 If you do have -- and, Madam Interpreter, if you could
20 interpret what I'm saying, please.

21 Mr. Subasic, sir, if you do have questions about the
22 interpretation that's being provided -- I believe you have a
23 pad and a pen -- you may make note of them. But please do not
24 interrupt the interpreter. It's complicating her ability to
25 provide you a translation of the proceedings here.

1 The reason that you've been permitted to attend this
2 status conference is because you were going to be here anyway
3 for the motions hearing. You filed a separate motion to be --
4 for permission to attend this status conference. That motion
5 was denied as moot because you were going to be here anyway.

6
7 So, your presence here is not, in the Court's view,
8 essential. As long as there aren't continued interruptions,
9 I'll allow you to remain here.

10 We'll address the interpretation issue with respect to
11 the motion that you've filed for substitution of counsel a bit
12 later when we get to that phase of the proceedings this
13 morning.

14 THE DEFENDANT (in English): Thank you for the
15 clarification.

16 THE COURT: And, Madam Interpreter, I don't want
17 to give you a hard time, but I asked you to interpret what I
18 was saying, and I noticed you were not doing that. And I am
19 relying upon you to interpret what is being said here,
20 particularly if the Court directs you to interpret, you must
21 interpret. Do you understand that?

22 THE INTERPRETER: Yes, your Honor. And the
23 interpreter would just ask you and everyone else here just to
24 slow down a little bit so that the interpreter can interpret
25 better.

1 Thank you.

2 THE COURT: Very good. Well, we'll do our best,
3 ma'am. It is incumbent upon you, if you do not -- if you are
4 not able to keep up, that you let us know. Otherwise, we
5 really have no way of knowing.

6 Do you understand that?

7 THE INTERPRETER: Yes, definitely.

8 THE COURT: Very good.

9 THE INTERPRETER: And also if the members of the
10 Court could just turn a little bit over here. I understand
11 that they have to look at you, but the point is that we cannot
12 hear everything over here.

13 So, if they could just turn a little bit over here so
14 that we can hear better.

15 THE COURT: Well, when they're addressing the
16 Court they need to speak to me, but they're -- I would
17 instruct everybody to keep their voices up.

18 THE INTERPRETER: Or maybe I should sit somewhere
19 else.

20 THE COURT: Well, the arrangements will remain as
21 they are now.

22 Mr. McCullough?

23 MR. McCULLOUGH: Your Honor, I'll try to
24 resummarize what I stated before.

25 I have been in contact with the American Embassy in

1 Amman on a regular basis. The embassy has provided me with
2 rooms to utilize on November the 10th of this year, suitable
3 for a deposition.

4 The consular officer will be available on that date to
5 administer the oath to the witnesses and to an interpreter.

6 The expenses of using the rooms are quite high, but
7 they are waivable when the U.S. Government is on the other
8 side, such as in this case, paying the fees.

9 The responsibility for paying the fees is that of the
10 Department of Justice, and -- by statute and regulation.
11 Therefore, I am going to provide additional information to the
12 government as to where to direct a letter from the Department
13 of Justice requesting a waiver of those fees.

14 The time frame for taking these is set by the Court to
15 be done by December 31st. Because of holidays in the Mideast,
16 holidays in the United States, the practicality of doing this,
17 it's incumbent that this be done the week of November the
18 5th. So, I will have to do a motion to the Court to expend
19 the funds and provide you an exact budget of what it will
20 cost, or as close as I can get to that budget, because I need
21 court approval to expend the expense of \$500.

22 I have located a court reporter who is willing to
23 accompany us to take the deposition. She is one of the
24 freelance court reporters here in Raleigh that does grand jury
25 transcriptions for the U.S. Attorney's Office, and she is

1 willing to go.

2 There are no court reporters available in Jordan, as
3 that's not a service that is utilized in their courts or legal
4 system. So, they don't have a market for court reporters.
5 You have to import your court reporter from somewhere.

6 The international court reporting service that I
7 contacted prior to finding this lady in Raleigh would have to
8 bring a court reporter in from Israel. The expense would be
9 roughly the same for me to bring in someone from Israel as it
10 is to bring in someone from the United States.

11 But the quality of the transcript would probably be a
12 great deal better if I can take somebody from here that is
13 familiar with this Court and the quality that this Court would
14 expect to have, and be close to the participants to check on
15 wording or if there's something she couldn't hear and to clean
16 the transcript up.

17 So, I think that we are on progress to take these
18 depositions. The government has provided the Department of
19 State with the information that they require. There is some
20 additional information which the government has requested that
21 I provide, and which will be provided early next week, as will
22 the motion that I am talking about for the expenses.

23 Thus, I think that we're making really good progress
24 toward completing this important task for Mr. Yaghi.

25 And for Mr. Subasic's information, this particular

1 deposition relates solely to the 2006 trip that Mr. Yaghi is
2 alleged to have taken, in the indictment, by himself, with not
3 any of the other defendants present.

4 THE COURT: Very good, sir. And I'm assuming,
5 Mr. McCullough, as you've done along the way, that you'll make
6 available to other counsel the information that you've
7 unearthed about the appropriate procedures that you've
8 discussed in the event that it might be of assistance to
9 them.

10 MR. McCULLOUGH: Yes, sir. I thought that once I
11 had everything in place I would do a memorandum to counsel of
12 record summarizing what I've learned, so that not only for
13 this case, but if it comes up in another case, the information
14 won't be forgotten and can be utilized.

15 But certainly, if there's other people in this case
16 that can take foreign depositions, they'll know the procedure,
17 and it might make it faster.

18 THE COURT: Very good. Thank you, sir.

19 Does any other counsel wish to be heard with respect to
20 foreign depositions?

21 Anything, Mr. Bowler?

22 MR. BOWLER: Very briefly, your Honor. We've
23 taken the information essentially that's been communicated to
24 us by Mr. McCullough, and through the good offices of
25 Mr. Kellhofer, transmitted that up through the Department of

1 Justice. And we are informed that the department has relayed
2 that to the Department of State and is in the process or has
3 already transmitted a diplomatic note to the Kingdom of
4 Jordan -- the government of the Kingdom of Jordan, which is
5 the process that our own Department of Justice requires of us
6 to participate in such a deposition.

7 THE COURT: Very good.

8 MR. BOWLER: Essentially, we've done all in our
9 power to be available and to follow through with this, but we
10 want the Court to be aware that --

11 THE COURT: Mr. Bowler, I'd suggest you just talk
12 normally. I've instructed the interpreter to let the Court
13 know if she has a problem keeping up, and I assume that she'll
14 do that.

15 MR. BOWLER: I'm sorry for the broken --

16 THE COURT: I know you're doing your best to
17 accommodate the interpreter's needs to make sure that
18 Mr. Subasic receives an interpretation, but the burden for
19 that really rests with the interpreter at this point. If she
20 does not understand, if we are talking too quickly, it's her
21 job to let us know.

22 MR. BOWLER: Essentially -- I'm sorry, your
23 Honor -- essentially, we've done everything we can through the
24 required channels and procedures that are incumbent on us.

25 We just make want to make it clear that it is quite

1 possible and it would not surprise us if the Kingdom of Jordan
2 simply says that -- denies this request to conduct this
3 deposition. And we have no control over that.

4 So, perhaps it will come off just as defense hopes it
5 does. But we have no ultimate control over whether or not the
6 Kingdom of Jordan will allow that to happen.

7 THE COURT: And the time frame for responses -- I
8 know we've talked about that before, but it's -- what's a
9 ballpark, recognizing that there's no definitive time period
10 here, as I understand it.

11 MR. BOWLER: Ms. Kocher is underlining a message
12 we received, which is what I was going to say, that we can't
13 comment, your Honor. We don't know. In the best -- the best
14 good-faith response that we can give the Court is we don't
15 really know and we don't have any control over it.

16 And I know that could create problems that we would
17 have to address downstream, but I'd have to present to the
18 Court what information I have at this stage.

19 THE COURT: And there's no past experience that
20 would be relevant that you're aware of?

21 MR. BOWLER: Well, I think our past experience is
22 that it varies a lot. So, we really don't know at this
23 stage. We'll do everything in our power to get an answer, a
24 substantive answer, for the Court so that we can proceed on
25 that basis, your Honor.

1 THE COURT: And are there mechanisms for follow-up
2 inquiries in case a response is not forthcoming after some
3 period of time?

4 MR. BOWLER: My understanding is the inquiries go
5 through the American Embassy in Amman, and we will repeat
6 those requests, your Honor.

7 THE COURT: Okay. Very good.

8 MR. McCULLOUGH: Your Honor.

9 THE COURT: Yes, sir, Mr. McCullough?

10 MR. McCULLOUGH: May I be heard?

11 THE COURT: You may.

12 MR. McCULLOUGH: Anticipating that the government
13 may not be allowed to physically enter the Kingdom of Jordan,
14 the government prosecutors who would normally be sitting in at
15 tables in the same room with me when the deposition is taking
16 place, I have requested information from the embassy as to
17 whether I would be allowed to attend solely. And they told me
18 that I would not be denied entry. Their treaty relates to
19 government personnel.

20 I don't know if my status would be different if I was
21 working for the public defender's office and paid by the
22 government. But I told them I was a private attorney, CJA
23 appointed. And they said you can come regardless of what
24 happens with them, and the room is still available.

25 At that point, in accordance with North Carolina law, I

1 would be willing to make a phone call to Raleigh from the
2 embassy and have a -- and have the room suitable for a
3 telephonic deposition, which would not require their physical
4 presence.

5 If they -- the Department of Justice decides that they
6 don't want to participate in that regard, it would be my
7 intention to take a sworn statement from the witness and later
8 utilize that and offer that to the Court through the residual
9 hearsay exception.

10 Of course that's a ruling the trial Court would have to
11 make at a later date, but I intend to preserve this evidence
12 with them being offered an opportunity to participate by
13 telephone or without them.

14 THE COURT: In light of that possibility,
15 Mr. McCullough, I assume that, if you haven't already made
16 inquiries about telephone service, that would be on your
17 agenda going forward?

18 MR. McCULLOUGH: I have made inquiries as to
19 whether they have suitable telephone service to make an
20 international call, and they said that is not a problem.

21 THE COURT: I see.

22 MR. McCULLOUGH: The embassy has quite a good
23 communication system.

24 THE COURT: Well, I would hope so, since it is an
25 embassy.

1 MR. McCULLOUGH: They need it these days.

2 THE COURT: And this, obviously -- the specific
3 arrangements for these foreign depositions, such as whether
4 the government would be willing to attend by telephone, those
5 are matters that counsel obviously would need to discuss at
6 the appropriate time.

7 MR. McCULLOUGH: Yes, sir. It's premature now
8 because it may be that the government of Jordan would permit
9 this case to go forward, whereas the last time they had a case
10 they didn't. But they have in previous cases allowed the
11 government to come forth, if I understand what Mr. Bowler is
12 saying, so that they review these cases on a case-by-case
13 basis.

14 THE COURT: Very good. Well, it appears that
15 there's been good cooperation on this between the government
16 and defense counsel, and the Court appreciates that, and, of
17 course, expects that to continue as issues arise along the way
18 in scheduling this particular set of depositions and any other
19 foreign depositions that may be taken.

20 Anything further from any counsel regarding foreign
21 depositions?

22 (No response.)

23 Are there any other issues that counsel believes can
24 appropriately be taken up during our general session here?

25 Mr. Bowler, is there anything, or Ms. Kocher, on behalf

1 of the government?

2 MR. BOWLER: We're not aware of anything else at
3 this time, your Honor. Thank you.

4 THE COURT: Very good. Are there any other issues
5 for the general session that any defense counsel wish to take
6 up?

7 MR. HILL: I've got one, your Honor.

8 THE COURT: Yes, sir.

9 MR. HILL: If you may recall, four months ago
10 everybody got computers -- or six months ago. My client's was
11 taken away because he tried to plug a telephone jack into it.

12

13 He kept doing it, and the marshals took his computer away.
14 So, he doesn't have access to look at these tapes or CDs and
15 help me get through the evidence.

16 Marshal Parker wasn't aware of that until this
17 morning. I told him. And I mentioned to Mr. Bowler that I
18 would like permission for him to get his computer back. It's
19 been four months. I think he understands how important it is,
20 so he can review the evidence.

21 So, I am working with that, I'll tell the Court.

22 THE COURT: Mr. Bowler?

23 MR. BOWLER: The information we received is that
24 it was a serious matters with the marshals. It was
25 essentially a breach of security or an attempted breach of

1 security by counsel's client.

2 Our hope is at this time to contact the marshal's
3 office, see if this can be worked out in some informal way so
4 that it can proceed and doesn't become an issue that's
5 necessary for the Court to address in terms of the client
6 becoming prepared with the material.

7 THE COURT: Okay. Well, Mr. Hill, you've pointed
8 out it's been four months, and that's a long time. And I'm
9 not passing judgment on whether this particular defendant
10 should or should not have access to the laptop, but it would
11 seem that that issue needs to be resolved one way or the
12 other, because time is moving on here.

13 So, I would direct the parties to consult with respect
14 to that. And, Mr. Hill, if a resolution can't be reached
15 informally, then I would encourage you to file a motion as
16 promptly as the determination is made that the resolution -- a
17 resolution that's satisfactory to the defendant cannot be
18 reached.

19 MR. HILL: I will, your Honor.

20 THE COURT: Very good. Thank you.

21 Let us talk, then, about scheduling our next status
22 conference. It's always gratifying to hear that the work is
23 continuing pace. Nonetheless, I think it is useful for the
24 Court to check in periodically. So I would like to continue
25 to meet periodically.

1 We've been meeting at approximately six-week
2 intervals. If we kept on that schedule, I believe we would be
3 meeting again around the week of November 16.

4 Does anybody wish to be heard regarding our -- the
5 schedule that we have been maintaining and whether we ought to
6 continue on a similar schedule?

7 Well, hearing no objection to that, how is the week of
8 November 16 for counsel? I guess that's -- the 16th is a
9 Tuesday.

10 Is that a convenient day for government counsel?

11 MR. BOWLER: As far as we know at the moment, your
12 Honor.

13 THE COURT: Okay. Does any defense counsel know
14 at this time if November 16th at 10 o'clock would be a date
15 they could not make?

16 Okay. Very good. Well, let's schedule our next status
17 conference, then, for November 16 at 10 a.m.

18 I assume it will be -- well, it may be in this
19 courtroom, it may be in another courtroom in our building
20 here, but we will let you know.

21 What I'd like to do now is meet in closed session with
22 defense counsel.

23 I would ask, Mr. Bowler and Ms. Kocher, can we -- can
24 the clerk reach you at your offices for when -- or later,
25 after the Court finishes with defense counsel, of course? I

1 would like to meet with you in closed session, just to check
2 in, make sure there's nothing further that we need to address
3 or take up whatever concerns you may have.

4 MR. BOWLER: Could I leave our numbers with the
5 clerk?

6 THE COURT: Very good. That will be fine.

7 Well, let's -- we'll take a brief recess while we close
8 the courtroom, and we'll meet with defense counsel as a
9 group.

10 (Recess taken at 11:01 a.m.)

11 * * *

12 (Transcript of the sealed ex parte proceeding involving
13 all defense counsel appears under separate cover.)

14 * * *

15 CERTIFICATION

16 I certify that the foregoing is a correct transcript of
17 the record of proceedings in the above-entitled matter to the
18 best of my skill and ability.

19

20

21 /s/ Harold M. Hagopian

October 27, 2010

22

Official Court Reporter

Date

23

24

25